

NIH POLICY MANUAL

2300-316-1 - AUTHORIZED USE OF TEMPORARY LIMITED APPOINTMENTS

Issuing Office: OD/OHR/DWM 402-8121

Release Date: 7/10/98

1. **Explanation of Material Transmitted:** This Instruction outlines NIH procedures used to adhere to the requirements of Subpart D of 5 CFR 316 on the use of temporary limited appointments in the competitive service.

2. **Filing Instructions:**

Remove: NIH Manual 2300-316-1, Authorized Use of Temporary Limited Appointments, dated 11/1/93.

Insert: NIH Manual 2300-316-1, Authorized Use of Temporary Limited Appointments, dated 7/10/98.

PLEASE NOTE: For information on:

- Content of this chapter, contact the issuing office listed above.
 - NIH Manual System, Contact the Office of Management Assessment, OA, on 496-2832.
 - On-line information, go to <http://www3.od.nih.gov/oma/manualchapters/>
-

A. Purpose

This chapter documents NIH adherence to OPM requirements, as stated in 5 CFR 316, Subpart D, "Temporary Limited Employment," on the use of temporary limited appointments in the competitive service. In addition, this chapter summarizes the NIH policy and procedures on the use of temporary limited appointments and should be used in conjunction with 5 CFR 316, Subpart D.

The requirements of this chapter apply to all temporary limited appointments in the competitive service. Exception: These procedures do not apply to the appointment of students under the Civil Service Student Education Employment Program or the employment of individuals under other non-permanent and/or excepted service employment mechanisms (e.g., Student Career Experience Program (SCEP), Student Temporary Employment Program (STEP)).

B. References:

- 5 CFR 316 Subpart D - "Temporary Limited Employment"
- 5 CFR 333 - "Recruitment and Selection for Temporary and Term Appointments Outside the Register"
- 5 CFR 330 - "Recruitment, Selection, and Placement (General)"

C. Policy:

In compliance with OPM requirements, it is NIH policy that temporary limited appointments will be used only to meet legitimate non-permanent staffing needs. Since the long term use of temporary appointments can deny employees civil service rights, benefits, and attainment of career status, it is important that temporary appointments be used only when the need for the employee is temporary and that the appointment continue only for as long the need remains temporary. Temporary appointments will not be used when the need for the employee is permanent. In those instances where temporary duties have evolved into work of a continuing nature, the temporary appointment should be terminated and the affected position should be filled on a permanent basis.

D. Appropriate Use of Temporary Appointments:

Temporary limited appointments may be based on selection from registers, outside-the-register procedures, reinstatement, or noncompetitive appointment eligibility. In addition, appointments may be made based on special needs or the disability status of the applicant in accordance with 5 CFR 333, "Recruitment and Selection for Temporary and Term Appointments Outside the Register" and 5 CFR 339.101 "Medical Qualifications Determination." Selection of outside applicants for temporary limited appointment are subject to employment restrictions as prescribed by OPM (i.e. appointments in excess of 120 days are subject to Interagency Career Transition Assistance Program [ICTAP] and Agency Career Transition Assistance Program [CTAP]). Applicants must meet relevant citizenship, qualifications, and eligibility requirements for appointment. The provisions of this chapter apply to appointments based on any of these mechanisms.

Temporary limited appointments are appropriate for meeting a range of staffing requirements when the IC expects there will be no permanent need for the employee. Examples of appropriate use include:

1. temporarily increasing staff to meet a workload peak;
2. filling a short term position (i.e., one that is not expected to last longer than one year)
3. staffing continuing positions when future funding and workload levels are uncertain or when it is anticipated that funding levels will be reduced or that the activity will be reorganized;
4. filling permanent positions on a temporary basis in order to save them for eventual incumbency by permanent employees expected to be displaced from other parts of the organization;
5. filling vacancies which occur in activities under study for possible contracting out; and
6. hiring temporary employees to perform recurring intermittent and seasonal work.

E. Inappropriate Use of Temporary Appointments:

Temporary appointments are intended to meet legitimate nonpermanent staffing needs. The use of temporary limited appointments and extensions for other reasons is inappropriate and is

not authorized. Examples of inappropriate and unauthorized usage include:

1. hiring temporary employees to avoid the costs of employee benefits;
2. using temporary appointments to extend other nonpermanent employment, including service fellowship (e.g., Research or Clinical Fellows, Postdoctoral Fellows, etc.) and Special Expert appointments;
3. using temporary employment as a "tryout" or unofficial probationary period prior to permanent appointment (except where specifically authorized for severely disabled or mentally restored employees); and
4. circumventing the competitive examining process by appointing an individual on a temporary basis because he or she is not within reach for permanent appointment or because a particular register is closed.

The limitation on temporary employment was established to maintain the distinction between permanent and temporary employment. For this reason, OPM prohibits the refilling of a position that has been filled continuously on a temporary basis. For example, the following actions are not authorized or permitted:

1. A position may not be filled by a temporary appointment if that position has previously been filled by other temporary appointments for an aggregate of 2 years, or 24 months, within the preceding 3 year period. For this purpose, it is irrelevant that there was or may be a break in service between the first 2-year block and any subsequent refilling of the position on a temporary basis.
2. After a position has been filled continuously on a temporary basis for two years, a successor position may not be created and filled with a temporary employee. (A successor position is one that replaces and absorbs the original position. Successor positions include upgraded jobs, positions transferred from one activity to another, and positions with new titles or reporting relationships but with no substantive change in duties.) A position involving the same basic duties in the same organizational and geographic location is considered a "successor position" unless it can be shown that the positions are clearly different. Appointment to a successor position is considered to be an extension of the original appointment.
3. Appointment to a position involving the same basic duties and in the same major subdivision of the IC and the same local commuting area as the original appointment is considered to be an extension of the original appointment.

F. Conditions of Employment:

1. The benefits and conditions of employment for temporary employees differ in a number of important respects from those of permanent employees. As indicated below, temporary employees:
 - a. do not acquire competitive status under a temporary limited appointment or eligibility to be non-competitively converted to a career-conditional appointment;

- b. do not serve a probationary period;
 - c. are not eligible for promotion, reassignment or transfer to other positions (but may be detailed in accordance with 5 USC 300.301 to another position which meets the criteria for temporary appointment, subject to the same time limits and documentation requirements applicable to details of permanent employees);
 - d. are not eligible for coverage under the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), or the Federal Employees Group Life Insurance (FEGLI) Program. (In certain cases, an employee serving under a temporary appointment may be eligible to continue such coverage when the temporary employment follows, without a break in service in excess of three days, employment in a covered position);
 - e. are not eligible for coverage under the Federal Employees Health Benefits Program (FEHB) until the employee has completed at least one year of current, continuous service. Temporary employees obtaining health benefits on this basis must pay the full cost of coverage, including both the employee and Government share. (Employees may carry over FEHB coverage when they move from covered positions to temporary appointments.);
 - f. are not covered by adverse action procedures under 5 U.S.C. 4303 and 5 U.S.C. 7511 even when converted to a new temporary appointment with total service extending beyond one year;
 - g. are not competing employees under reduction-in-force procedures and may be terminated at any time upon written notice;
 - h. are not eligible for within-grade increases when serving in General Schedule positions, even when extended beyond one year. (Temporary employees serving in Federal Wage System positions are eligible for such increases in certain cases.)
2. Other benefits and conditions of employment for temporary employees are comparable to those of permanent employees. For example temporary employees:
- a. may work on a part-time, intermittent, or full-time basis;
 - b. earn sick leave when appointed to a position with a regularly scheduled tour of duty, (i.e., part-time or full time). Employees on a part-time tour will earn sick leave on a prorated basis. Temporary employees on regularly scheduled tours of duty, who are appointed for more than 90 days, also earn annual leave;
 - c. are covered by applicable performance management systems;

d. are eligible for consideration for incentive awards on the same basis as permanent employees; and

e. are eligible for workman's compensation for injury on the job.

G. Time Limits and Extension of Appointments:

When appropriately justified, temporary limited appointments may initially be made for a specified period of up to one (1) year. When appropriate circumstances continue to exist, temporary appointments may be extended up to a maximum of one (1) additional year (24 months of total service). Extensions should not be regarded as automatic; rather each must be based on continued appropriate justification and demonstration of temporary need.

Appointment to a position involving the same basic duties and in the same major subdivision of the IC and the same local commuting area as the original appointment is also considered to be an extension of the original appointment.

Exception: Appointments and extension of appointments may be made to positions involving intermittent or seasonal work without regard to the time limitations stated above provided that: appointments and extensions are made in increments of one (1) year or less; employment in the same or a successor position under this and any other authority totals less than 6 months (1040 hours) excluding overtime, in a service year. Should a position filled under this exception total 6 months or more in any service year, the time limits stated above must be applied to subsequent extensions or reappointment.

H. Certification of Appropriate Use:

In compliance with OPM documentation requirements, the following procedures will be followed to assure that temporary limited appointments are properly made and extended, and that employees are fully aware of the conditions and limitations of their employment. As described below, the selecting official's "Justification for Temporary Limited Appointment" (Form NIH 2736-1), the "Employee's Statement of Understanding Regarding Temporary Appointment" (Form NIH 2736-3), and standard remarks on the SF-50, "Notification of Personnel Action," are required for all appointment and extension actions, regardless of the selection mechanism used.

1. Form NIH 2736-1, "Justification For Temporary Limited Appointment," as illustrated in Appendix 1 must be completed for all temporary limited appointments and extensions. This form describes appropriate and inappropriate usage of the temporary appointing authority, and serves to document the reason why a temporary appointment and any extension(s) are justified.
 - a. Selecting officials must complete the justification on Form NIH 2736-1 to support a request for a new temporary appointment or extension of a current appointment. The completed form should be forwarded along with other required documents through appropriate IC channels to the IC Human Resource Representative.
 - b. The signed NIH form 2736-1 must be submitted as an attachment to NIH

2736-2, "Request for Certification of Eligibles for Temporary Limited Positions," (see Appendices 1 and 2) when requesting referral and certification of eligibles from the NIH temporary register or IC Delegated Examining Unit (DEU).

- c. When a temporary appointment is made or extended, the original copy of Form NIH 2736-1 must be forwarded to the appropriate OHRM office, or the Agents of the Servicing Personnel Office (SPO), along with other required documents, for inclusion in the employee's Official Personnel Folder (OPF). The requested personnel action will not be effected unless this document is provided.
2. It is essential that employees understand that the conditions of temporary employment differ from those of permanent employment. Form NIH 2736-3, "Employee's Statement of Understanding Regarding Temporary Appointment" as illustrated in Appendix 3 will be used for this purpose. This "Statement" describes the circumstances when temporary appointments can be used and extended, and the benefits and conditions that may or may not be applicable. ICs are encouraged to provide additional orientation and clarification as required to assure that temporary employees understand the conditions of their employment.
 - a. Individuals selected for temporary appointment must read and complete Form NIH 2736-3 prior to their entrance on duty. A new Form NIH 2736-3 must be completed if the temporary appointment is extended.
 - b. When a temporary appointment is made or extended, the original copy of the completed form NIH 2736-3 must be forwarded by the IC Human Resource Office, along with other required documents, to the Division of Human Resource Systems (DHRS) or Agents of the SPO for inclusion in the employee's OPF. The requested personnel action will not be effected unless this document is provided.

I. Copies of Forms:

IC Personnel offices may obtain original copies of Forms NIH 2736-1, 2736-2, and 2736-3 for local reproduction by contacting the Human Resource Program Support Division, OHRM on 496-2404. Other users may obtain copies from their IC Personnel Office.

J. Management Controls:

The purpose of this manual issuance is to provide guidance on the use of NIH policies and procedures related to the use of the temporary limited appointing authority. Management control reviews (MCR) involving a statistically valid random sample of the IC use of this appointing authority will be conducted every 3 years and will be led by the NIH Office of Human Resource Management. Issues identified as a result of the MCR will be brought to the attention of the Director of Human Resources. The report of the findings of the MCR will be provided to the Director of Human Resources, Director, NIH, IC Directors, and IC Human Resource Officers.

K. Records Retention and Disposal:

All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of NIH Manual [1743](#), "Keeping and Destroying Records," Appendix 1, NIH Records Control Schedule, Item 2300-293-1.

NIH e-mail messages: NIH e-mail messages (messages, including attachments that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of NIH or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. If necessary, back up file capability should be created for this purpose.

All e-mail messages are considered Government property, and if requested for a legitimate government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of the Inspector General may request access to or copies of e-mail messages. E-mail messages must also be provided to Congressional Oversight Committees, if requested, and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are sometimes retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a backup file after they have been deleted from an individual's computer. The backup files are subject to the same requests as the original message. Contact your IC Records Officer for additional information.

Justification for Temporary Limited Appointment

This form must be completed for all temporary limited appointments and extensions in the competitive service (except those under the civil service Summer Employment Program). When certification from the NIH temporary register is requested, a copy of this form must accompany Form NIH 2736-2, "Request for Certification of Eligibles for Temporary Limited Positions." Originals must be filed in temporary employees' Official Personnel Folders. See NIH Manual 2300-316-1, "Authorized Use of Temporary Appointments" for further instructions.

Justification for Temporary Limited Appointment

Authorized to meet legitimate nonpermanent staffing needs, when the need for the employee is temporary. Other use is not authorized. (See 5 CFR 316, Subpart D.)

Check one:

- ☐ Position is not expected to last more than one year.
- ☐ Part-time or intermittent position not clearly of a continuing nature.
- ☐ Seasonal position (involving recurring work expected to last less than six months each year).
- ☐ Future funding for vacancy/position uncertain.
- ☐ Future workload level uncertain.
- ☐ Vacancy/position currently under study for possible contracting out.
- ☐ Permanent position being filled temporarily in order to save it for eventual incumbency by a permanent employee expected to be displaced from another activity or organization.
- ☐ Permanent/continuing position temporarily vacated for periods of less than one year (i.e., current incumbent on maternity leave or leave-without-pay because of on-the-job injury or other appropriate reason).
- ☐ Position or vacancy is research oriented and not expected to last or continue for more than one year.
- ☐ Other appropriate reason. (Describe. See inappropriate circumstances as follows.)

For position being filled, list title, series, grade, and organizational location

Inappropriate Use of Temporary Limited Appointments

Inappropriate temporary appointment or extension denies employees civil service rights, benefits, and attainment of career status, and blurs distinctions between permanent and temporary employment. Examples include:

1. To circumvent ceiling restrictions.
2. To extend other temporary appointment.
3. To extend other non-permanent employment, including service fellowship and Special Expert appointments.
4. To use as a trial or unofficial probationary period prior to permanent appointment (except where specifically authorized for severely disabled or mentally restored employees).
5. To avoid the cost of permanent employee benefits.
6. To circumvent delays in the processing or approval of another appointment; or while certification or approval of a permanent appointment is pending; or because the individual cannot be appointed on a permanent basis (e.g., because the appropriate register is closed or the individual is not within reach).
7. To refill positions which, over the preceding four years, have been filled continuously on a temporary basis. Prohibitions include:
 - a. refilling positions with either the same or different temporary employee, even when there is a break in service between the first block of four years and any subsequent temporary refilling; and
 - b. creating successor temporary positions that replace and absorb the original positions. Successor positions include those that are upgraded, those transferred from one activity to another, and those with new titles or reporting relationships but no substantive change in duties.

Selecting Official's Signature

Date

Signature of Human Resource Officer (or designee)

I C

Date

Request for Certification of Eligibles for Temporary Limited Positions

For open requests, please submit original and one copy of this form, one copy of the position description and OF-8, and one copy of temporary justification (Form NIH 2736-1). For name requests, submit the above, plus a copy of SF 171 (and a copy of OPM 1170/17 or transcripts when applicable). Crediting plan numbers are to be submitted for all Federal Wage System positions.

Original applications of eligibles **not** selected for appointment should be attached and returned with appropriate documentation.

Send this form to: Division of Career Resources, OHRM
Building 31, Room B3C07

IC	IC Request No.	Date of Request	Certificate No.	Date Issued
----	----------------	-----------------	-----------------	-------------

Number of Vacancies, Position Title, Series, Grade, Duty Location. List any selective factors.

Tour of Duty: ☐ F/T ☐ P/T

If P/T, number of hours per pay period: _____ and length of appointment (NTE) either: ☐ 1 year or ☐ _____

Signature of IC Human Resource Officer (or designee)
(Certifies that 5 CFR 316, Subpart D, and NIH Manual 2300-316-1 have been reviewed, and that all conditions and requirements governing the use and extension of temporary limited appointments have been met.)

Building/Room

Referral

The following list of eligibles is provided in response to the above request:

Action*	Veteran's Preference	Name	EOD Date

*Codes for "Action"

A — Selected (For each selection provide the expected date of appointment)
CR — Communication Returned Unclaimed
DD — Declined Until a Later Date
NS — Not Selected

NN — Not Selected/Not Contacted
DP — Declined for position certified only
DZ — Declined for other reasons
FR — Failed to Reply
DA — Declined Agency

DB — Declined Grade
DL — Declined Location
DX — Declined Further
Consideration for
Federal Employment

⇒ Original applications of eligibles NOT selected for appointment should be attached and returned with appropriate documentation.

Signature of Issuing Officer, Division of Career Resources, OHRM

Verification of Action: Signature of IC Human Resource Officer (or designee)

Employee's Statement of Understanding Regarding Temporary Appointment

This form must be completed for all temporary limited appointments and extensions (except those under the civil service Summer Employment Program). Originals must be filed in the Official Personnel Folder.

Authorized Use and Duration of Temporary Limited Appointments

Temporary limited appointments are used to meet legitimate nonpermanent staffing needs, when the need for the employee is expected to be temporary. When appropriately justified, temporary appointments may be made for periods of up to one year. When appropriate justification continues to exist, temporary appointments may be extended in the same position not to exceed one year or 24 months total.

A position that has been legitimately filled on a temporary basis for three years may not be refilled on a temporary basis. This prohibition applies to appointment of either the same or a different temporary employee. It also applies even if there is a break in service between one block of three years and any subsequent temporary refilling. Furthermore, a successor position, which replaces and absorbs the original position, may not be created and filled with a temporary employee. Successor positions include upgraded jobs, positions transferred from one activity to another, and positions with new titles or reporting relationships but no substantive change in duties. Additionally, temporary appointments may not be used to extend other non-permanent employment, including service fellowship (e.g., Staff or Senior Staff Fellowship, Clinical Associate [SF], etc.) and Special Expert appointments.

Employee's Statement of Understanding

I understand that temporary employees:

- serve under appointments limited to one year or less and are subject to termination at any time without use of adverse action or reduction-in-force procedures.
- are not eligible for promotion, reassignment, or transfer to other positions.
- do not acquire competitive status or eligibility to be noncompetitively converted to a career-conditional appointment.
- are not eligible for coverage under the Civil Service Retirement System, the Federal Employees Retirement System, or the Federal Employees Group Life Insurance Program (except that in certain cases employees may carry over such coverage when they move from covered positions to temporary appointments).
- are not eligible for coverage under the Federal Employees' Health Benefits Program until completion of one year of current, continuous service. Temporary employees obtaining health benefits on this basis must pay the full cost of coverage, including both the employee and government share. (Employees may carry over such coverage when they move from covered positions to temporary appointments).
- are not eligible for within-grade increases when serving in General Schedule positions, even when extended beyond one year. (Temporary employees serving in Federal Wage System positions *are* eligible for such increases, in certain cases.)
- are covered by Social Security and subject to federal, state, and local tax requirements.
- earn leave when appointed to a position with a regularly scheduled tour of duty (i.e., part time or full time). All regularly schedule temporary employees earn sick leave, and those whose appointments are made for more than 90 days earn annual leave.
- are covered by applicable performance management and appraisal requirements on the same basis as permanent employees.
- are eligible for consideration for incentive cash awards.

Signature of Employee

Date